

BEFORE THE INVESTIGATIVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING JUDGE
HOWARD C. BERMAN, JQC NO.
00-211

CASE NO. SC00-2491

MOTION TO COMPEL TESTIMONY OF ROXANNE RAMOS

JUDGE HOWARD BERMAN, by and through the undersigned counsel, moves for an order compelling the testimony of the witness, Roxanne Ramos, on the following grounds:

1. Roxanne Ramos is the witness whose testimony underlies one of the series of charges set forth in the Notice of Formal Charges of the Judicial Qualifications Commission against JUDGE BERMAN. Ms. Ramos is currently and at all times material hereto has been a probation officer employed by the State of Florida.

2. The nature of Ms. Ramos' allegations against JUDGE BERMAN relate to sexual harassment, alleged inappropriate touching, and inappropriate overtures of a sexual nature.

3. Ms. Ramos was represented at her deposition on May 15, 2001, by Attorney Jack Scarola. As is reflected in the attached excerpts from the deposition of Ms. Ramos, Mr. Scarola instructed her not to answer numerous questions.

4. Ms. Ramos made certain allegations against Mr. Frank Roy, which led to the arrest of Mr. Roy (Transcript, pp. 15, 16).

5. Ms. Ramos gave a written statement to the Palm Beach County Sheriff's Office on October 12, 2000 in which she made numerous allegations that Frank Roy physically abused her (Ramos Dep. Ex. 4).

6. Mr. Scarola instructed the witness not to answer questions with regard to the allegations made in her statement to the sheriff's office (Ramos Dep. Ex. 4; Ramos Dep. pp. 19, 20). The witness did not answer the questions.

7. Additionally, Ms. Ramos was instructed not to answer questions with regard to whether she retracted the allegations that were made on October 12, 2000, in a handwritten retraction document which is part of the official court file (Ramos Dep. pp. 21, 22; Exhibit 5). The witness did not answer the questions.

8. Ms. Ramos was instructed not to answer whether she advised the attorneys involved in the October incident that she was a creative writer, and knew how to embellish details (Ramos Dep. p. 22).

9. Exhibit 5 to the Ramos deposition contains, among other things, the letter that appears to have been signed by Roxanne Ramos requesting that the state drop the charges against Mr. Roy. No answers were given with regard to this document.

10. Additionally, Ms. Ramos was instructed not to answer, and did not answer, questions with regard to a copy of a civil file which may have been taken from her house by Mr. Roy and which may have involved the allegations against JUDGE HOWARD BERMAN, the respondent herein (Ramos Dep. pp. 24, 25).

11. Other questions which Ms. Ramos declined to answer on the basis of the Fifth Amendment privilege against self-incrimination were:

- Whether the injuries that she claimed were made by Mr. Roy were documented and photographed (Ramos Dep., p. 21)
- Whether she requested that the charges against Mr. Roy be dropped (Ramos Dep., p. 22)
- Whether she had conversations with anyone at the State's Attorney's Office regarding their policy on dropping charges of domestic violence (Ramos Dep., p. 24)
- Whether after the charges were dropped against Mr. Roy, in October of 2000, he returned to live with her (Ramos Dep., p. 25)

12. After a long series of questions as to which Ms. Ramos asserted the Fifth Amendment privilege against self-incrimination, her attorney stated:

"If it's any help to you in expediting this matter, as to any questions concerning Ms. Ramos' role as the alleged victim of a battery, alleged to have been perpetrated by Mr. Roy, as to any questions concerning Ms. Ramos' current relationship with Mr. Roy, Ms. Ramos will assert her Fifth Amendment privilege against self-incrimination." (Ramos Dep., p. 26)

13 As is demonstrated above, the questions which Ms. Ramos refused to answer both applied to the incident with Mr. Roy, and as to other matters.

14. All of the instructions not to answer questions by Ms. Ramos' counsel were on the basis of the Fifth Amendment privilege against self-incrimination.

15. In Lande Verde v. State, 769 So. 2d 457 (4th DCA Fla. 2000), the

Court stated:

“In resolving the conflict between a defendant’s right to compel testimony and a witness’ Fifth Amendment privilege, the trial court must first determine whether the witness can validly assert a Fifth Amendment claim. In this regard, the trial court must evaluate whether a witness invoking a Fifth Amendment privilege ‘is confronted by substantial and ‘real,’ and not merely trifling or imaginary hazards of incrimination.’ (Citations omitted). This is a question of law for the Court to decide upon a voir dire examination.”

16. In the instant case, some of the questions as to which the Fifth Amendment privilege were asserted are clearly not questions which relate to any hazard of incrimination. For example, the question of whether Ms. Ramos stated that she was a “creative writer, and knew how to embellish details.” (Ramos Dep., p. 22). Also, the statements with regard to the question of whether a civil file related to Judge Berman may have been taken from her house and whether it had been returned. (Ramos Dep., pp. 24, 25).

17. As to the balance of the questions which relate to the domestic violence complaint which Ms. Ramos filed and her retraction of the allegations, there is no basis to believe that there is any consideration of a charge of perjury, or any other crime, threatened, pending, or “substantial and real.”

18. The charges which Ms. Ramos made against her then live-in boyfriend, Mr. Roy, and the charges she has made against Judge Berman, are quite similar in nature. The fact that she made the charges against Mr. Roy on October 12, 2000, during which she detailed in her report to the Palm Beach County Sheriff’s

office dated October 12, 2000, and then retracted those allegations on November 28, 2000, stating "he has never hit or punched me," and "xxx no criminal offense took place," directly contradicting her detailed allegations of Mr. Roy's conduct in her October 12 statement is certainly relevant to her credibility in regard to the charges against Judge Berman. Neither the statement to the Palm Beach County Sheriff's office dated October 12, 2000, nor the retraction letter are under oath. (Ramos Dep., Exhibit 4 and part of Exhibit 5).

WHEREFORE, Judge Berman respectfully requests that the Judicial Qualifications Commission require the witness, Roxanne Ramos, to answer the question posed to her and questions relevant thereto, or, alternatively, prohibit her testimony at the hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the persons on the attached Service List this 25th day of May, 2001.

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